

REMARKS

This Election and Amendment is in response to the Office Action, dated February 27, 2009 ("Office Action"). Claims 1-39 are pending. Claims 13-33 are withdrawn; second claim 14 is amended; and claim 39 is added by virtue of the present amendment. No new matter is added. Examination of the claims in view of the ensuing remarks is respectfully requested.

The claim numbering for the second "Claim 14" has been corrected to recite "Claim 15."

Claim 39 has been added and recites that the isolated stem cell is a neural stem cell and that the neural stem cell exhibits a CXCR4 receptor and demonstrates an affinity for the chemokine SDF-1.

In the Office Action, Examiner required election among groups of the claimed invention described in Groups I-III under 35 U.S.C. §§121 and 372. These Groups were noted as follows:

- I. Claims 1-12 and 34-38, drawn to isolated stem cells and kits comprising isolated stem cells;
- II. Claims 13-17, drawn to methods for assessing tumor tropic potential of a stem cell; and
- III. Claims 18-33, drawn to methods of treating disease.

The Examiner found that Groups I-III do not relate to a single inventive concept because they lack the same or corresponding special technical feature. The Examiner alleged that Claim 1 of the subject application is anticipated by Spencer *et al.* (BONE MARROW TRANSPLANTATION, (2001), 28:1019-1022) and thus, the remaining claims lack a special technical feature. Additionally, the Examiner found that the instant claims are drawn to two different methods of use and therefore lack unity.

In addition to the aforementioned restriction, the Examiner is requiring restriction for the following species: (A) astrocytic precursor marker; (B) heterologous gene

encoding a polypeptide for therapeutic use; and (C) disease condition.

The species for the astrocytic precursor marker include: (I) A2B5 astrocytic precursor marker; and (II) GFAP astrocytic precursor marker. The Examiner found Claims 3, 4, 15, 16, 21 and 22 to correspond to this species, as well as Claims 2, 14 and 18 being generic.

The species for the heterologous gene encoding a polypeptide for therapeutic use include: (1) IL-12; (II) IL-4; and (III) TRAIL. The Examiner found Claims 9-11 and 27-29 to correspond to this species, as well as Claims 5-8 and 23-26 being generic.

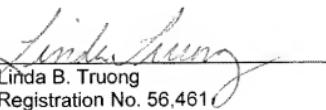
The species for the disease condition include the conditions recited in Claims 30 and 36. The Examiner found Claims 30 and 36 to correspond to this species, as well as Claims 18-29 and 34-35 being generic.

Applicants respectfully traverse the Examiner's finding that Claim 1 is anticipated by Spencer *et al.* and reserve the right for arguments following an examination on the merits.

Applicants hereby elect the embodiment of the instant invention described in **Group I**, upon which Claims 1-12 and 34-38, and new claim 39 are readable, for prosecution on the merits. Furthermore, Applicants elect the following species: (I) A2B5 as the astrocytic precursor marker; (II) IL-12 as the heterologous gene encoding a polypeptide for therapeutic use; and (III) glioblastoma multiforme as the disease condition, for prosecution on the merits. This species election read on claims: 1-3, 5-9, 12, and 34-38, and new claim 39. Applicants reserve the right to pursue any unelected groups and species in one or more divisional applications.

All of the claims in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited. If for any reason Examiner finds the application other than in condition for allowance, Examiner is requested to call the undersigned attorney at the Los Angeles telephone number (213) 633-6800 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,
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